

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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December 15, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Regan:

We request that the Environmental Protection Agency (EPA) unmask internal Biden Administration comment authorship in a production responsive to the Committee's June 21, 2023, request.¹ In redacted documents produced by EPA to the Committee,² unknown Biden Administration officials provided comments on an internal draft of the rule which cast significant doubt over whether a proposed EPA rule is viable. Specifically, EPA's proposed *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule* (hereinafter NSPS Emissions Rule or Rule) may not have met the requisite standards for new emissions rules.³ We request that EPA disclose the authors of these comments and emphasize our expectation that future productions be fully transparent.

The Clean Air Act enables EPA to develop new emissions standards when appropriate, but it also directs the agency to consider whether those standards are achievable at a reasonable cost and to determine if the technology required for compliance—called the best system of emission reduction (BSER)—is adequately demonstrated.⁴ In the NSPS Emissions Rule, EPA offers two avenues for compliance with the proposed rule to targeted power plants: hydrogen co-firing and carbon capture, utilization, and sequestration/storage (CCUS, also referred to as carbon capture and sequestration/storage, or CCS).⁵ The following screenshotted comments on

¹ Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, *et al.*, to Michael S. Regan, Administrator, EPA (June 21, 2023).


² Document production from EPA to H. Comm. on Oversight and Accountability (Oct. 10, 2023), on file with H. Comm. on Oversight and Accountability staff.

³ EPA, *New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*, 88 Fed. Reg. 33240 (May 23, 2023) (proposed rule).


⁴ 42 U.S.C. § 7411.

⁵ *See supra*, n.3, at 4.

the internal draft proposal seem to clearly express that neither hydrogen⁶ nor CCUS⁷ have been adequately demonstrated, thus negating the viability of the Rule:

 **Author**

Hydrogen combustion is a promising technology for some applications. While demonstrated in certain pilot or small scale/test applications, hydrogen combustion has not been adequately demonstrated nation-wide for utility scale power generation. Some issues with this technology are identified below:

 **Author**

Reviewer expressed concern that (CCUS) has not yet met the legal threshold for being considered a BSER since it has not been adequately demonstrated. There are several factors to consider in determining the feasibility of CCUS. CCUS remains prohibitively expensive even after use of funds or tax credits made available through the Inflation Reduction Act.

Given the nature of the above comments and the Rule’s potential impact on fossil fuel-fired power plants—which produce 60 percent of U.S. electricity generation⁸—it is imperative that the Committee and the American public are made aware of the Administration’s apparent doubt concerning the legality of its own rulemaking.

The October 20, 2023, production alone contains 606 comments that identify extensive problems with the Rule.⁹ While the production does not include the authorship of the internal government comments to which we refer, it does include email correspondence involving EPA,¹⁰ the Office of Information and Regulatory Affairs,¹¹ the Federal Energy Regulatory Commission,¹² the Department of Energy,¹³ National Climate Advisor Ali Zaidi,¹⁴ the

⁶ Comment, *supra*, n.2, at HOA-NSPS-001581.

⁷ *Id.* at HOA-NSPS-001628.

⁸ U.S. Energy Information Admin., *What is U.S. electricity generation by energy source?*, last visited Oct. 27, 2023).

⁹ *Supra*, n.2.

¹⁰ *See supra* n.2, at HOA-NSPS-001874.

¹¹ *Id.*

¹² *Id.* at HOA-NSPS-007907.

¹³ *Id.* at HOA-NSPS-001905.

¹⁴ *Id.* at HOA-NSPS-001904.

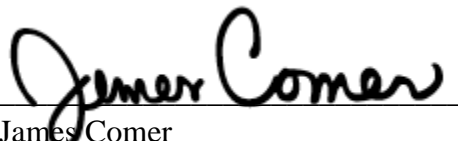
Department of Justice,¹⁵ and the White House Office of the General Counsel¹⁶ pertaining to review of the Rule. Dissent from any of these entities has significant implications for the Rule's credibility. Therefore, it is important for EPA to identify the authorship of each comment to understand who raised the critiques and why these critiques were ignored. Further, the correspondence between these parties seems to indicate that despite concerns held by any or all of these entities that the NSPS Rule cannot lawfully be promulgated, EPA has brazenly decided to move forward with the Rule.

Given the far-reaching implications of the Rule and its potentially devastating impact on national grid reliability, electricity costs, and consumers, we request that EPA provide the Committee with unredacted versions of the documents, including identities of all comments or other notes labeled as "Author," in the October 10, 2023, production no later than December 28, 2023, and continue to provide further unredacted document productions pursuant to Committee requests.

To arrange for delivery of responsive documents or to ask any related follow-up questions, please contact the Committee on Oversight and Accountability Majority staff at 202-225-5074. Attached are instructions for producing the documents and information to the Committee.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, "any matter" at "any time" under House Rule X. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath it.

James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

¹⁵ *Id.*

¹⁶ *Id.*